

November 1, 2010

VIA ELECTRONIC DELIVERY

Elizabeth M. Murphy
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

**Re: Mutual Fund Distribution Fees; Confirmations
File No. S7-15-10**

Dear Ms. Murphy:

TIAA-CREF Individual & Institutional Services, LLC (“TC Services”) appreciates the opportunity to comment on the Securities and Exchange Commission (“SEC” or “Commission”) proposal to address so-called “12b-1 fees”. This proposal would replace Rule 12b-1 under the Investment Company Act of 1940, as amended, and change the means by which mutual funds pay for distribution through the use of fund assets. We support the proposal’s intent of providing investors with more meaningful information about mutual fund fees.

One portion of the proposal seeks to amend Rule 10b-10 under the Securities Exchange Act of 1934, as amended, (“1934 Act”) to require confirmation statements provide investors with personalized information about several newly proposed fee categories—a mutual fund’s “ongoing sales charges” and “marketing and services fees.” It is this specific portion of the proposal—these two Rule 10b-10 changes—that TC Services will address.

By way of background, the proposing release provides an example of what this new personalized fee disclosure would look like on a mutual fund confirmation statement:

“You will pay a maximum total ongoing sales charge of 5%, deducted from the assets of the fund in which you are investing at an annual rate of 1% over the next 5 years. You also will pay marketing and service fees of 0.25% for as long as you own the fund.”¹

¹ Mutual Fund Distribution Fees; Confirmations, Securities Act Release No. 9128 at 70 (July 21, 2010) [75 FR 47064 (Aug. 4, 2010)], available at <http://sec.gov/rules/proposed/2010/33-9128.pdf> (hereinafter “Proposing Release”).

The proposal would further require confirmation statements include the following:

“In addition to ongoing sales charges and marketing and service fees, you will also incur additional fees and expenses in connection with owning this mutual fund, as set forth in the fee table in the mutual fund prospectus; these typically will include management fees and other expenses. Such fees and expenses are generally paid from the assets of the mutual fund in which you are investing. Therefore, these costs are indirectly paid by you.”²

The proposing release requests comment on whether investors would find the proposed disclosure beneficial.³ TC Services is not aware of any empirical data suggesting investors would find this post sale personalized fee disclosure helpful. We instead believe there are other simpler, less costly means of providing meaningful fee information to investors at a point in time when they can better use it—i.e., in advance of making an investment decision. Accordingly, we believe the Commission cannot adopt the proposal because it is inconsistent with Section 3(f) of the 1934 Act. That section states:

“Whenever pursuant to this title the Commission is engaged in rulemaking, or in the review of a rule of a self-regulatory organization, and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.”

As set forth below, we do not believe the Commission has adequately determined the disclosure is either necessary or an appropriately efficient means of protecting the interests of investors. The costs to implement its requirements are substantial, the benefits to investors are unproven and cheaper alternatives are available.

I. WHO WE ARE

TC Services is registered with the Commission as a broker-dealer under 1934 Act and a member of the Financial Industry Regulatory Authority.

TC Services is wholly owned by Teachers Insurance and Annuity Association of America (“TIAA”). TC Services and TIAA are members of the TIAA-CREF group of companies which comprise one of the world’s largest retirement plan systems. For over 90 years, TIAA-CREF has helped people in the academic, research, medical and cultural fields plan for and live through retirement. TIAA-CREF presently serves over 3.7 million individuals.

² *Id.*

³ Proposing Release at 73.

TC Services annually provides these individuals with over 17 million immediate confirmation statements or quarterly statements consistent with the alternative periodic reporting provisions of rule 10b-10(b) which permit quarterly reporting for transactions involving investment company plans (collectively “confirmation statements”).

II. COMMENTS

A. The Proposal Does Not Demonstrate the Disclosure is Beneficial.

Given the timing of confirmation statements, investors would not receive the proposed disclosures until well after making a purchase. The proposal does not provide data supporting the notion that disclosure provided either post sale or in such a personalized manner is beneficial to investors.

In fact, a 2008 study commissioned at the Commission’s request found the opposite.⁴ This study—commonly referred to as the “Rand Report”—determined investors believe disclosures made even earlier in time (i.e., at the point of sale) were often too late to make a difference.⁵

We also are unaware of any data supporting the belief that personalized disclosure materially benefits investors more so than standardized disclosure. In 2003, the United States Government Accountability Office conducted a study that in part considered whether mutual funds should provide more tailored, personalized fee disclosure to investors—in this instance, personalized by specific dollar amount as opposed to a percentage of assets.⁶

The GAO study found that personalized disclosure was costly and data on its benefits to investors was not generally available.⁷ The GAO study found the Commission’s staff agreed data in support of personalized fee disclosure was “generally lacking”.⁸ The study also states:

“SEC and industry participants noted that having more definitive data on the extent to which investors want and would benefit from receiving information on the specific dollar amount of fees they paid would be necessary before requiring

⁴ Angela Hung, et al., RAND Corp., Investor and Industry Perspectives on Investment Advisers and Broker-Dealers (2008), available at http://www.sec.gov/news/press/2008/2008-1_randiabdreport.pdf.

⁵ RAND Report at 20.

⁶ GAO, MUTUAL FUNDS: GREATER TRANSPARENCY NEEDED IN DISCLOSURES TO INVESTORS (GAO-03-763) (June 9, 2003) (“GAO Study”).

⁷ *Id.* at 1.

⁸ *Id.* at 3.

mutual funds, broker-dealers, and other intermediaries to undertake the costly revisions to their systems necessary to capture such information.”⁹

The study also noted:

“Given the cost of producing such disclosures and the lack of data on the additional benefits to investors, the SEC staff indicated that they were not certain that specific dollar disclosures are warranted.”¹⁰

In addition, the GAO study also surveyed financial planners as to the importance of personalized dollar disclosure regarding fund operating expenses—the majority of whom did not think it provided much additional benefit to their clients.¹¹

In sum, there is substantial empirical evidence the proposed disclosure is not effective or justified in light of its costs. Moreover, the current proposal offers no evidence that the Commission has since obtained “more definitive data” in support of personalized cost and fee disclosure. Instead, the proposal concludes without support, “These [Rule 10b-10] proposed amendments may lead to increased efficiency and competitiveness by enhancing the ability of investors to more specifically understand information related to their transactions in these securities...”¹² Such a summary assertion does not meet the rigorous standard the 1934 Act sets for such rulemaking.

B. There are Effective Less Costly Alternatives.

In 2003, one transfer agent estimated that its cost to develop the capability to track and disclose specific dollar fee disclosures as between \$1.5 to \$3 million.¹³ TC Services believes it would incur similar costs to develop the fee tracking and disclosures required by the current proposal.

Given these costs and absence of data supporting the benefits of this disclosure, we believe the Commission should consider less expensive, simpler alternatives. The GAO study acknowledges that less costly alternatives to personalized fee disclosure still can provide investors “valuable information about the relative costs of investing in different funds.”¹⁴

⁹ *Id.* at 14-15 (emphasis added).

¹⁰ *Id.* at 54.

¹¹ GAO Study at 12.

¹² Proposing Release at 248.

¹³ *Id.* at 14.

¹⁴ *Id.* at 55.

We believe the Commission should re-evaluate the adequacy of existing standardized disclosure. Every mutual fund already includes a standardized fee and expense table in its prospectus. The prospectus includes a fee table containing information about the sales charges, operating expenses, and other fees that investors pay as part of investing in the fund. Specifically, the table that mutual funds must provide presents (1) charges paid directly by shareholders out of their investment such as front or back-end sales loads and (2) recurring charges deducted from fund assets such as management fees, distribution fees, and other expenses paid by the fund. The fees deducted from the fund's assets on an ongoing basis are reported to investors as a percentage of fund assets. The fee table also contains a hypothetical example that shows the estimated dollar amount of expenses that an investor could expect to pay over 1, 3, 5 and 10 year periods on a \$10,000 investment if the investor received a 5-percent annual return. This information provides investors with a simple means by which they could understand fund fees and compare one fund against another in advance of a purchase should they be interested. Relying upon the prospectus fee table also consolidates fee disclosure in one central location—the primary disclosure vehicle for mutual funds which is widely available for review prior to making an investment decision.

Alternatively, should the Commission subsequently establish by the use of definitive data that investors find post sale disclosure substantially beneficial, the Commission could instead require confirmation statements to prominently alert investors to review the prospectus fee table for important information about fees and charges. The GAO study acknowledged standardized disclosure as a viable less costly alternative to personalized disclosure.¹⁵ By way of example, the Commission could modify the disclosure statement currently set forth in proposed Rule 10b-10(a)(10)(iii)(B) to read as follows:

You will incur fees and expenses in connection with owning this mutual fund which are set forth in the fee table in the mutual fund prospectus. These are costs paid indirectly by you. Please review the prospectus for additional information about fees.”

As another alternative, the Commission could revise the proposal to require the confirmation statement provide personalized data about only the proposed ongoing sales charge, e.g., the current portion of existing 12b1 fees in excess of 25 basis points. This would provide substantial relief to broker-dealers who do not distribute such funds—which includes broker-dealers supporting employer sponsored retirement plans who would otherwise need to develop from near scratch the ability to track various mutual funds' different marketing and service fees and provide the associated personalized fee data.

¹⁵ “An even less costly alternative could be to require quarterly statements to also include a notice that reminds investors that they pay fees and to check their prospectus and with their financial advisor for more information.” *Id.*

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III. CONCLUSION

TC Services supports transparent effective disclosure to investors of relevant fee information. We believe that information should be provided in a central, easily accessible and understandable format for investors. Unfortunately, we cannot support the Commission's proposed approach because we believe it is ineffective, unduly costly and inconsistent with the 1934 Act. We look forward to working with the Commission and its Staff to develop a more workable, investor-friendly approach to full and fair disclosure.

We very much appreciate the opportunity to comment on this proposal and the Commission's continued focus on protecting the interests of investors. Should you wish to discuss our comments, please contact the undersigned at 303.626.4229.

Very truly yours,

Adym W. Rygmyr
Associate General Counsel
TIAA-CREF Individual & Institutional
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